

## **REMARKS**

The Examiner has rejected Claims 1 - 48 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,772,585 to Lavin et al. (hereinafter "Lavin"), in view of U.S. Patent No. 6,151,581 to Kraftson et al. (hereinafter "Kraftson"). Respectfully, Applicants traverse.

### **I. REJECTIONS OF CLAIMS 1-48 UNDER 35 U.S.C. §103(a)**

1. *The obviousness rejections of Claims 1-48 should be withdrawn because the suggested combination of Lavin and Kraftson does not disclose, teach, or suggest each and every feature of the claim.*

Claim 1 relates to "[a] system to match a consumer of health care services to a health care service provider over a communications network, the system comprising: at least one computer terminal associated with the consumer for allowing the consumer access to the communications network; a network server coupled to the communications network, the server comprising a computer program having: a service provider data base identifying a plurality of health care service providers and **associated health care service products offered by the service providers**; a first methodology for determining an appropriate treatment based on a diagnosis provided by the consumer or determined by an alternative diagnosis determiner; and **a second methodology for determining at least one appropriate service provider based on a treatment preference** comprising at least one of geographical location of the provider, insurance plan participation, cost, provider experience with the treatment and provider outcome with respect to the treatment."

Lavin purportedly relates to "a system and method for **managing patient medical information**. More particularly, this invention relates to a system and method for improving medical clinic information management and examination information handling." See Lavin, col. 1, lines 15-20. As characterized, "[t]he method comprises a computer aided process including the steps of scheduling appointment, entering and displaying data to a physician, updating the patient data with progress notes concurrently with an examination, displaying allergy warnings and recording a diagnosis based on progress notes." Lavin, Abstract.

Kraftson purportedly relates “to the field of database population and processing, and more specifically to receiving and processing physician clinical and patient care survey information, and providing health outcomes and clinical practice information for physician patient care and practice quality improvement.” Col. 1, lines 13-19. As characterized, the “system encompasses (i) designing and administering paper and pen and hand held computer survey instruments; (ii) administering and collecting completed surveys; (iii) building and managing a database of information collected from the surveys; (iv) analyzing data collected from the surveys; (v) and providing clinical practices with summary information.” Kraftson, Abstract.

To establish a prima facie case of obviousness of a claimed invention, the Examiner must show that the suggested combination teaches or suggests all of the claim limitations. In re Royka, 490 F.2d 981 (CCPA 1974); M.P.E.P. 2143.03. “**All words** in a claim must be considered in judging the patentability of that claim against the prior art.” In re Wilson, 424 F.2d 1382, 1385 (CCPA 1970) (emphasis supplied); M.P.E.P. 2143.03. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071 (Fed Cir. 1988); M.P.E.P. 2143.03.

In accordance with this standard, it is respectfully submitted that the combination of Lavin and Kraftson does not disclose, teach, or suggest a “system comprising: . . . a service provider data base identifying a plurality of health care service providers and **associated health care service products offered by the service providers,**” **and a second methodology for determining at least one appropriate service provider**, as recited in Claim 1. As described above, Lavin is primarily concerned with “managing a patient’s medical information,” and is not concerned with matching consumers of health care product to provides of health care service products. Regarding Kraftson, Applicant recognizes that this reference refers to “providing health outcomes and clinical practice information,” however, the reference does not discuss or suggest the matching of consumers of health care services to providers of health care service products. Instead, Kraftson relates to a system of collecting information for a database relevant to patient care. Summary information is developed to improve patient care, health outcomes and physician practice management. However, the system of Kraftson is not directed, nor does it

fairly suggest, alone or in combination with Lavin, a system that matches consumers of health care services to providers of health care service products.

The Examiner asserts that Lavin (in Col. 5, line 36 - Col. 6, line 67) discloses this feature. Office Action, p2. However, as is shown and described throughout Lavin, the system merely allows a medical clinical staff to schedule physician examinations for patients. Lavin, Col. 5, line 36 - Col. 6, line 67.

For at least the foregoing reasons, it is respectfully submitted that Claim 1 is allowable over the combination of Lavin and Kraftson. Accordingly, it is submitted that the Examiner should withdraw the rejection of Claim 1. Furthermore, since Claims 17 and 33 contain features analogous to Claim 1, and Claims 2-16 ultimately depend on Claim 1, Claims 18 - 32 ultimately depend on Claim 17, and Claims 34-48 ultimately depend on Claim 17, it is also respectfully submitted that the rejections of Claims 2-48 be withdrawn for at least the same reasons.

2. *The obviousness rejections of Claims 1-48 should be withdrawn because Lavin is in a non-analogous art.*

“In order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443 (Fed. Cir. 1992); M.P.E.P. §2141.01(a).

Lavin discloses “a system and method for **managing patient medical information**. More particularly, this invention relates to a system and method for improving medical clinic information management and examination information handling.” Col. 1, lines 16-20. In contrast, the present invention “relates to a system which can be used by both individual patients and corporate consumers of medical services to determine who the appropriate provider of medical services for the consumer should be.” Application, p1, lines 5-8. “The present invention relates generally to a system and process that allows the consumer to obtain health care services and the provider to market those services over the Internet.” Application, p2, lines 10-23. “Competitive marketing of health care services through e-commerce is an intrinsic element of the system.” Application, p3, lines 7-8. Whereas Lavin relates to a form of database management,

the present invention relates to a form of e-commerce. As such, it is respectfully submitted that Lavin is not in the field of the applicant's endeavor.

Furthermore, Lavin is not remotely pertinent to the particular problem with which the present invention is concerned. The present invention fills the void of a system or process that facilitates competitive marketing of health care services to the consumer. Application, p2. Lavin, on the other hand, merely relates to managing and better organizing patients' medical information. As such, it is respectfully submitted that Lavin is not reasonably pertinent to the particular problem with which the Applicant is concerned.

For at least the foregoing reasons, Lavin is non-analogous art as applied against the present application. As such, it is respectfully submitted that this reference may not form the basis (either in whole or in part) of obviousness rejections of claims 1-48. Accordingly, it is kindly requested that the rejections of claims 1-48 be withdrawn.

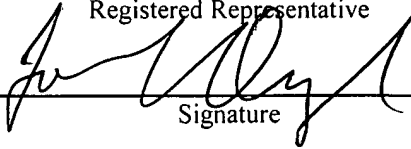
## II. CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending claims are currently in allowable condition. Accordingly, reconsideration and prompt allowance of all pending claims is therefore earnestly solicited.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 223131450, on July 11, 2003

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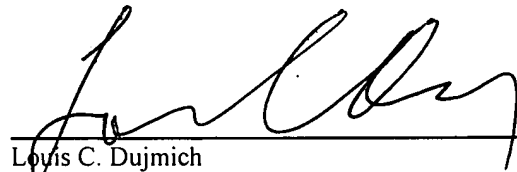


Signature

July 11, 2003

Date of Signature

Respectfully submitted,



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